

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHELLY MARGARET ARNDT,

Petitioner,

v.

DEBORAH JO WOFFORD,

Respondent.

CASE NO. C20-5958 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 11, and Petitioner Shelly Arndt’s objections to the R&R, Dkt. 12.

Arndt brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging her November 2015 conviction in Kitsap County Superior Court. Dkt. 3. In 2015, Arndt was convicted of two counts of murder, one count of first-degree arson, and six counts of second-degree assault. Dkt. 8-1 at 2–3. In October 2016, while her appeal was pending, Arndt moved for a mistrial after discovering that a juror (“Juror 2”) had committed misconduct by looking up the term “premeditation” on the internet during

1 Arndt's trial. *Id.* at 501. The superior court denied the motion, finding beyond a
2 reasonable doubt that the misconduct could not have affected the verdict. *Id.* at 626.

3 Arndt appealed the superior court's ruling, and the Washington State Court of
4 Appeals affirmed the decision over a dissent. *See State v. Arndt*, 5 Wn. App. 2d 804
5 (2018), *rev. denied* 192 Wn.2d 1013 (2019). Arndt then filed a personal restraint petition
6 in May 2019 in the State Court of Appeals, again challenging her conviction on the basis
7 of Juror 2's misconduct. Dkt. 8-1 at 830, 841. The State Court of Appeals dismissed the
8 petition since it had already decided the issue on direct appeal, and the State Supreme
9 Court denied review of the matter.

10 In October 2020, Arndt filed the instant petition for writ of habeas corpus. Dkt. 3.
11 On January 19, 2021, Judge Creatura issued the R&R, recommending Arndt's petition be
12 denied because Arndt failed to show harmful error. Arndt objected to the R&R's
13 conclusion, Dkt. 12, and Respondent Deborah Jo Wofford responded to the objections,
14 Dkt. 13.

15 The district judge must determine de novo any part of the magistrate judge's
16 disposition that has been properly objected to. The district judge may accept, reject, or
17 modify the recommended disposition; receive further evidence; or return the matter to the
18 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

19 Arndt objects to the R&R's conclusion that Juror 2's research was not harmful
20 error and argues that she can show that Juror 2's research had a substantial and injurious
21 effect on the jury's verdict. However, Arndt's objections repeat the same arguments
22 Judge Creatura considered in the R&R. Arndt argues that because it is unknown what

1 websites Juror 2 reviewed in researching “premeditation,” Juror 2’s research had a
2 substantial and injurious effect on the jury verdict. But Judge Creatura correctly
3 concluded that Arndt’s speculation about what Juror 2 relied on does not meet the
4 standard set forth in *Brecht v. Abrahamson*, 507 U.S. 619 (1993).

5 Arndt also argues that Juror 2 changed their vote as a result of the research;
6 however, when “a juror reviews a definition that is substantially the same as the jury
7 instructions, the juror misconduct does not merit habeas review.” Dkt. 11 at 5 (citing
8 *United States v. Steele*, 785 F.2d 743, 745–49 (9th Cir. 1986); *Mendoza v. Runnles*, 251
9 F. App’x 406, 408 (9th Cir. 2007)). The R&R correctly concluded that the premeditation
10 jury instructions included substantially the same information as Juror 2’s *known* research.

11 Finally, Arndt objects to the R&R’s recommendation that to not hold an
12 evidentiary hearing and to not issue a certificate of appealability. The Court agrees with
13 the R&R’s conclusion as Arndt’s petition can be resolved on the existing state court
14 record and as the petition has not made a substantial showing of the denial of a
15 constitutional right.

1 The Court having considered the R&R, Petitioner's objections, and the remaining
2 record, does hereby find and order as follows:

- 3 (1) The R&R is **ADOPTED**;
- 4 (2) Petition is **DENIED**;
- 5 (3) Certificate of Appealability is **DENIED**; and
- 6 (4) The Clerk shall enter a JUDGMENT and close the case.

7 Dated this 22nd day of March, 2021.

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10 BENJAMIN H. SETTLE
United States District Judge